

***United States Court of Appeals
for the Second Circuit***



APPENDIX

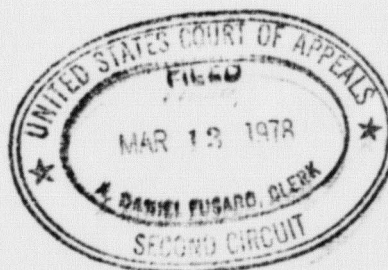
77-1502

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
77-1502

: UNITED STATES OF AMERICA, :
: Appellee, :
: -against- :
: CASPAR ALEXANDER YASPAP, :
: Appellant. :
:

B
P/s

APPENDIX



HUDSON H. REID
Carroll, McGarry & Reid
ATTORNEYS FOR Appellant
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XXXXXXXXXXXX
NEW YORK, N. Y. 10013
—
(212) 964-9452

PAGINATION AS IN ORIGINAL COPY

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-1502

:	UNITED STATES OF AMERICA,	:
:		:
:	Appellee,	:
:		:
:	-against-	:
:		:
:	CASPAR ALEXANDER YASPAR,	:
:		:
:	Appellant.	:
:		:

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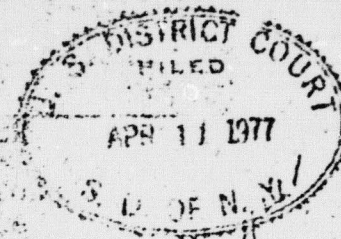
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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
4/11/77	Complaint filed.
6/3/77	Certified copy of indictment 77 Cr. 421 filed.
6/13/77	Unsecured appearance bond of \$10,000 filed.
7/22/77	Certified copy of superseding indictment filed.
9/21/77	Judgment and commitment Order filed.
9/21/77	Unsecured personal recognizance bond pending appeal filed.
9/22/77	Notice of appearance from judgment of 9/21/77 filed.
12/23/77	Clerk's certificate filed.

Approved: _____

RAYE



Before: _____

HONORABLE DAVID L. ...
United States ...
Southern District of New York

UNITED STATES OF AMERICA :

-v- :

CASPER ALEXANDER YASPER, :

Defendant. :

COMPLAINT

Violation of
18 U.S.C. § 1341

SOUTHERN DISTRICT OF NEW YORK, ss.:

DAVID LIEBOV, being duly sworn, deposes and says that he is a Postal Inspector of the United States Postal Inspection Service and charges as follows:

On or about the 14th day of January, 1977 in the Southern District of New York, the defendant CASPER ALEXANDER YASPER, having devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises; unlawfully and wilfully placed in a post office and other authorized depository for mail matter and caused to be delivered a credit card application to be sent and delivered to the Chase Bank Americard Corporation.

The bases for deponent's knowledge and for the foregoing charge are, in part, as follows:

1. Investigation in the course of my official duties.
2. Statements by the defendant that he prepared and mailed the above-described application.
3. I am informed by John Myles of the American Express Company that the defendant has fraudulently obtained at least three American Express cards on which he has incurred at least \$22,000 in unpaid obligations.
4. False statements and representations by the defendant as to his date of birth, social security number and other financial data on the above-described credit card application.

①

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RAL:ka

WHEREFORE, I do hereby certify that a warrant may issue
for the apprehension of the defendant and that
he may be arrested and taken into custody, as the case
may be.

David Lilbov

DAVID LILBOV
Postal Inspector, U.S.P.I.S.

Sworn to before me this
11th day of April, 1977

Martin D. Jacobs

US Mar

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA, :

- v - :

INDICTMENT

CASPER ALEXANDER YASPER, :

77 Cr. 431

also known as Chester Yasper, :

Defendant. :

- - - - -x

COUNT ONE

The Grand Jury charges:

1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, the defendant, CASPER ALEXANDER YASPER, also known as Chester H. Yasper, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property from the American Express Company, a commercial enterprise, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER YASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

2. It was part of said scheme that the defendant, CASPER ALEXANDER YASPER would and did make purchases in the amount of approximately \$11,000 by the use of said fraudulently-obtained credit card, and did not pay for such purchases.

3. It was further part of said scheme that the defendant CASPER ALEXANDER YASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and cause to be

placed in a post office and other authorized depository for mail matter and caused to be delivered by the Postal Service, according to the directions thereon, a credit card application addressed to: The American Express Company, 770 Broadway, New York, New York.

(Title 18, United States Code, Section 1341.)

COUNT TWO

The Grand Jury further charges:

From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, the defendant, unlawfully, wilfully and knowingly and for the purpose of conducting, promoting and carrying on by means of the Postal Service the scheme and artifice to defraud and to obtain money and property set forth in Count One of the Indictment, the allegations of which are incorporated herein by this reference, and other unlawful business, did use, assume and request to be addressed by a certain fictitious, false and assumed name and address other than his own proper name and address, to wit the name "Chester H. Yasper" and the address, 1649 West Mentor Street, Philadelphia, Pennsylvania, and under this name did take and receive mail matter addressed to such fictitious, false and assumed name.

(Title 18, United States Code, Section 1342.)

COUNT THREE

The Grand Jury further charges:

1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, also known

as C. Alex Yasper, the defendant, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property from the American Express Company, a commercial enterprise, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER YASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

2. It was part of said scheme that defendant, CASPER ALEXANDER YASPER, would and did thereafter make purchases in the amount of approximately \$8,000 by the use of said fraudulently-obtained credit, and did not pay for such purchases.

It was further part of said scheme that the defendant, CASPER ALEXANDER YASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and caused to be placed in a post office and other authorized depository for mail matter and cause to be delivered by the Postal Service, according to the directions thereon, a credit card application addressed to: The American Express Company, 770 Broadway, New York, New York.

(Title 18, United States Code, Section 1341.)

COUNT FOUR

The Grand Jury further charges:

1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, also known as C. Yasper, the defendant, unlawfully, wilfully,

and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property from the American Express Company, a commercial enterprise, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER YASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

2. It was part of said scheme that the defendant, CASPER ALEXANDER YASPER, did thereafter make purchases in the amount of approximately \$2,200 by the use of said fraudulently-obtained credit card, and did not pay for such purchases.

3. It was further part of said scheme that the defendant, CASPER ALEXANDER YASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and cause to be placed in a post office and other authorized depository for mail matter and cause to be sent and delivered by the Postal Service according to the directions thereon a credit card application addressed to: The American Express Company, 770 Broadway, New York, New York.

(Title 18, United States Code, Section 1341.)

FORWARDED

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

CASPER ALEXANDER YASPER,
also known as Chester Yasper,

Defendant.

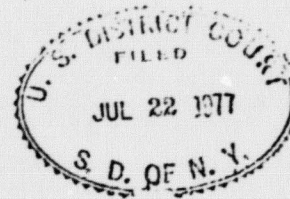
: INDICTMENT

: S 77 Cr. 421

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-x



COUNT ONE

The Grand Jury charges:

1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, the defendant, CASPER ALEXANDER YASPER, also known as Chester H. Yasper, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property from the American Express Company, a commercial enterprise, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER YASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

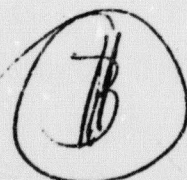
2. It was part of said scheme that the defendant, CASPER ALEXANDER YASPER would and did make purchases in the amount of approximately \$11,000 by the use of said fraudulently-obtained credit card, and did not pay for such purchases.

3. It was further part of said scheme that the defendant CASPER ALEXANDER YASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and cause to be place in a post

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office and other authorized office and caused to be delivered by the post office according to the directions thereon, a credit card addressed to: The American Express Company, Post Office Box 1885, New York, New York, 1008.

(Title 18, United States Code, Section 1341.)

COUNT TWO

The Grand Jury further charges:

From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, the defendant, unlawfully, wilfully and knowingly and for the purpose of conducting, promoting and carrying on by means of the Postal Service the scheme and artifice to defraud and to obtain money and property set forth in Count One of the Indictment, the allegations of which are incorporated herein by this reference, and other unlawful business, did use, assume and request to be addressed by a certain fictitious, false and assumed name and address other than his own proper name and address, to wit the name "Chester H. Yasper" and the address, 1649 West Mentor Street, Philadelphia, Pennsylvania, and under this name did take and receive mail matter addressed to such fictitious, false and assumed name.

(Title 18, United States Code, Section 1342.)

COUNT THREE

The Grand Jury further charges:

1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, also known

as C. Alex Yasper, the defendant, knowingly did devise and intend to use a scheme and artifice to defraud and to obtain money and property from the American Express Company, a commercial enterprise, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER YASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

2. It was part of said scheme that defendant, CASPER ALEXANDER YASPER, would and did thereafter make purchases in the amount of approximately \$8,000 by the use of said fraudulently-obtained credit, and did not pay for such purchases.

It was further part of said scheme that the defendant, CASPER ALEXANDER YASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and caused to be placed in a post office and other authorized depository for mail matter and cause to be delivered by the Postal Service, according to the directions thereon, a credit card application addressed to: The American Express Company, Post Office Box 1885, New York, New York, 1008.

(Title 18, United States Code, Section 1341.)

COUNT FOUR

The Grand Jury further charges:

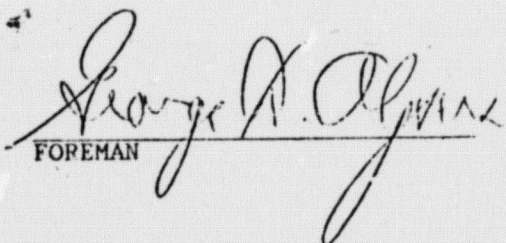
1. From on or about the first day of March, 1975 to on or about April 11, 1977, in the Southern District of New York and elsewhere, CASPER ALEXANDER YASPER, also known as C. Yasper, the defendant, unlawfully, wilfully, and

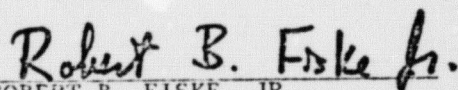
knowingly did devise and intend to execute a scheme and artifice to defraud and to obtain money and property from the American Express Company, a corporation, by means of false and fraudulent pretenses, representations and promises in that CASPER ALEXANDER VASPER, the defendant, representing as true, false and inaccurate credit, employment and personal information, applied for and thereby secured a credit card from the American Express Company.

2. It was part of said scheme that the defendant, CASPER ALEXANDER VASPER, did thereafter make purchases in the amount of approximately \$2,200 by the use of said fraudulently-obtained credit card, and did not pay for such purchases.

3. It was further part of said scheme that the defendant, CASPER ALEXANDER VASPER, for the purpose of executing and attempting to execute such scheme and artifice, did unlawfully and wilfully place and cause to be placed in a post office and other authorized depository for mail matter and cause to be sent and delivered by the Postal Service according to the directions thereon a credit card application addressed to: The American Express Company, Post Office Box 1885, New York, New York, 10008.

(Title 18, United States Code, Section 1341.)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

Casper Alexander Ynapper

DEFENDANT

Case No. 421

JUDGMENT AND PROBATION

In the presence of the attorney for the government
the defendant appeared in person on this date

21

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised that the defendant has been advised that he has the right to have counsel appointed to represent him if he is unable to obtain counsel.

☒ WITH COUNSEL

Hudson Reid

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea.☐ NOLO CONTENDERE☒ NOT GUILTYThere being a ~~not guilty~~ verdict of
☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly using the mails in a scheme and artifice to defraud. (Title 18, U.S. Code, §1341.); unlawfully, wilfully and knowingly for the purpose of conducting, promoting and carrying on a scheme and artifice to defraud did use, assume and request to be addressed by a ~~firm~~ false and assumed name and address and taking and receiving mail addressed to such false and assumed name. (Title 18, U.S. Code, §1342.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1, 2 and 3, to run concurrently with each other. The Court recommends that the defendant receive psychiatric treatment as the Attorney General may deem advisable.

Bail pending appeal fixed ~~xxx~~ in the amount of \$10,000 Personal Recognizance Bond. Defendant is to report to the U.S. Marshal once a week while appeal is pending.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation set out above, it is hereby ordered that the special conditions of probation set out on the reverse side of this judgment be imposed. The Court may, at any time, modify the conditions of probation, order, or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

COMMITMENT
RECOMMEN-
DATION

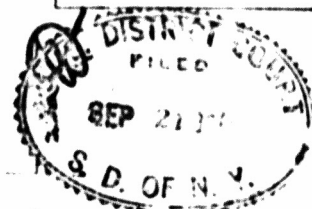
SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Dudley B. Bongal

Date 9-21-77

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



Philip T. Morgan (Direct Examination)

Appendix Pages A-1 to A-9

(Transcript Pages 49 to 57)

1 alkln Morgan - direct 49
2 Albany, New York, \$18.45; Allegheny Airlines, Washington
3 D.C., \$60.73; Johnson Motor Lodge, Albany, New York,
4 \$21.19; Sheraton Park Hotel, Washington, D.C., \$39.99;
5 American Airlines, Inc., \$345.68; American Airlines, Inc.
6 again, \$268; extended airline charges, two more; an
7 additional five extended airline charges; the composite
8 bill of the airline charges which totalled 11, extended
9 airline charges again, six; and an additional six ex-
10 tended airline charges.

11 That's all.

12 MR. LEVITES: May we have a br side bar,
13 your Honor, with reference to the next question to be
14 put to the witness?

15 THE COURT: All right.

16 (At the side bar.)

17 MR. LEVITES: I just want to put on the
18 record that I now intend to elicit some of the similar
19 act evidence.

20 THE COURT: What are you going to elicit
21 from him?

22 MR. LEVITES: Because he is the witness from
23 American Express and some of the similar acts are from
24 American Express, as I indicated in my memorandum of
25 law. This man applied for six applications in the past

1 alkln Morgan - direct 50

2 under different names.

3 THE COURT: Do you have the records?

4 MR. LEVITES: Yes, your Honor.

5 THE COURT: Then you can put the records
6 on. That only goes to the knowledge and intent.

7 MR. LEVITES: Yes, of course, your Honor.
8 Pattern, knowledge and intent.

9 THE COURT: You can do that.

10 (In open court.)

11 MR. LEVITES: Let the record reflect that
12 I am showing defense counsel Government's Exhibits 26
13 through 31.

14 (Pause.)

15 THE COURT: Ladies and gentlemen of the
16 jury, I understand this evidentially doesn't relate to
17 this indictment at all but merely relates to other
18 credit transactions with American Express Company, and
19 I will tell you the purpose of this evidence when you
20 hear my charge. But I understand these records are not
21 related to this particular indictment; is that correct?

22 MR. LEVITES: That's correct, your Honor.

23 THE COURT: Okay.

24 (Pause.)

25 MR. REID: Your Honor, object to this line

1 alkln Morgan - direct 51
2 of questioning once again. I was unaware of what Mr.
3 Levites implied to the Court when we had the side bar.
4 I object and I can state it at the side bar.

5 THE COURT: No, nevermind. I will receive
6 this evidence and you have an exception.

7 MR. REID: May I have an exception on the
8 record?

9 THE COURT: You have an exception.

10 Q Tell me, Mr. Morgan, prior to the receipt
11 by American Express of the applications already in evi-
12 dence about which you testified, did you have occasion
13 in the past to be familiar with the name Yasper?

14 A I have.

15 Q Let me show you Government's Exhibits 26
16 through 31 for identification and I ask you, without
17 telling us what they are, are you familiar with those?
18 Have you seen them before?

19 A Yes, I have.

20 Q Look at each one, please.

21 (Pause.)

22 Q What are they, sir?

23 A They are all applications for American
24 Express cards.

25 Q Were they all received by American Express?

1 alklm Morgan - direct 52

2 A They were.

3 Q These are from the files of American Express?

4 A They are.

5 MR. LEVITES: I offer these in evidence at

6 this time, your Honor.

7 MR. REID: Objection, your Honor.

8 THE COURT: What's the name of the applicant?

9 THE WITNESS: On number 26 --

10 ? Just give us the last name.

11 A Yasper. Yasper. That was number 27. On

12 28, it's Yasper. On 29 it's Yasper. On 30 it's

13 Yasper. And on 31 it's Yasper.

14 THE COURT: What are the dates?

15 THE WITNESS: 3/19/70; 3/3/71; 3/24/71;

16 12/3/71; 12/2/71; September 1970.

17 THE COURT: So these are applications from

18 the years '70 and '71?

19 THE WITNESS: Yes, sir.

20 THE COURT: In the name of Yasper?

21 THE WITNESS: Yes, sir.

22 MR. LEVITES: I renew my offer of these

23 exhibits in evidence, Judge.

24 THE COURT: I'm going to hold it before I

25 receive them in evidence. I will look at them. He's

1 elklm Morgan - direct 53
2 testified these are old applications, '70, '71, as I
3 understand it, in the name of Yasper. I won't receive
4 them now.

5 MR. REID: Your Honor, I withdraw my objec-
6 tion to these being received in evidence. I want them
7 in evidence.

8 THE COURT: If you do that, I will receive
9 them.

xxx

10 (Government's Exhibits 26 through 31 were
11 received in evidence.)

12 Q Referring to them by exhibit numbers, will
13 you please give us the name, the address, employment of
14 those individuals on Exhibits 26 through 31?

15 MR. REID: Your Honor, I am going to object
16 to this question as being irrelevant. The applications
17 speak for themselves.

18 THE COURT: No, I will let him. He is trained.
19 I will let him go to that extent.

20 Whose applications are they, 26 through 31?

21 THE WITNESS: Number 26 is Curtis Yasper,
22 330 West 48th Street, New York, with a place of business
23 as VI Tourist Board, 9 Rockefeller Plaza, New York.

24 THE COURT: VI Tourist Board?

25 THE WITNESS: Yes, your Honor. 9 Rockefeller

A-7

1 elklm Morgan - direct 55
2 330 West 45th Street, New York, age 32, social security
3 number 066-48-4016. Place of business Virgin Island
4 Government, 16 West 49th Street, New York; director.

5 On number 27, it shows C. Charles Yasper,
6 401 Seventh Avenue, New York, New York, age 41. Social
7 security number 124-46-4303. Place of business, Virgin
8 Islands Government, Commercial Tourism, 16 West 49th
9 Street, New York, New York; assistant director.

10 That is it.

11 ? Can you tell us what losses, if any,
12 American Express incurred on those accounts?

13 MR. REID: Objection, your Honor.

14 THE COURT: I will let him answer that
15 question. That is in '70 and '71?

16 MR. LEVITES: Yes.

17 A \$51,000.

18 MR. LEVITES: May we approach the side bar,
19 your Honor.

20 THE COURT: Oh, no, we can't do that.

21 MR. LEVITES: I have a piece of evidence
22 I want to offer.

23 THE COURT: But you can't have side bars
24 every ten seconds everytime you have a piece of evidence.
25 Go ahead.

elklm

Morgan - direct

56

Q Would you briefly explain to the jury how a credit limit is reached, what procedures American Express uses, what factors they consider in setting the credit limit on any given card?

A Basically when the applications come in, they have certain criteria that they look up: dollar amount of salary, place of business, longevity in business, how long at the home address, listed banks, bank references.

These are all checked out through the credit bureau and if all things are given the same, they go to the credit bureau with the address on the application, the place of business, they send it into the credit bureau and if that applications comes back marked no derogatory information, the card would be issued. There would be no reason not to.

If the application is weak, they check the bank references. If it seems that they need a little bit more, they check the bank's references. And if all the information given is correct and the man comes out clear in the credit bureau, he gets a credit card.

Q With reference to the maximum amount of debt that can be incurred on a card at any given time, what factors does American Express rely on in that regard?

elklm

Morgan - direct

57

1 A American Express looks at the payment that
2
3 is made on an account, and based on the payments, the
4 ability to pay, they grant credit on an escalated scale.
5 If a man pays \$10,000 in one month, naturally he would
6 receive more credit than a man who paid \$1500 or \$50 a
7 month.

8 Also they look at the ability to pay as
9 far as the salary is concerned.

10 MR. LEVITES: Thank you very much.

11 Your witness.

12 CROSS-EXAMINATION

13 BY MR. REID:

14 A Mr. Morgan, take a look at Government's
15 Exhibits 1, 2 and 3.

16 You have discussed this with Mr. Levites
17 prior to today; is that correct?

18 A I discussed it with him before, yes.

19 Q Before today?

20 A Before today.

21 Q All right. Is there anything on those
22 application cards with respect to employment that American
23 Express found to be fraudulent?

24 A No.

25 Q Take a look at Government's Exhibit 1 in

xxx

Philip T. Morgan (Redirect Examination)

Appendix Pages A-10 to A-19

(Transcript Pages 87 to 96)

1 elkim

Morgan - redirect

87

2 to \$11,000 on that card?

3 A No.

4 Q If he had made no payments?

5 A No, he wouldn't.

6 Q Isn't it a fact that each of these cards
7 was issued when the other one was more or less used
8 up and revoked?

9 A That is true.

10 MR. LEVITES: Your Honor, I am showing
11 counsel 32 and 32A which I intend to offer into evidence.

12 (Pause.)

13 MR. REID: I object to 32 and 32A, your Honor.
14 I think we need a side bar conference for that.

15 THE COURT: I am going to excuse the jury
16 now anyway for their afternoon recess.

17 (Jury left the courtroom.)

18 THE COURT: What is Exhibit 32 and 32A?

19 MR. REID: 32 and 32A are in the unfortunate
20 situation that happened to Mr. Yasper in 1974, the
21 conviction and the indictment --

22 THE COURT: You are going too fast for me.

23 MR. REID: Sorry. 32 is the transcript --

24 MR. LEVITES: It's the certified -- obviously,
25 your Honor, motive and intent are at the core of this

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elklm Morgan - redirect

case.

THE COURT: Let me see the exhibits, please.

(Pause.)

THE COURT: Count 4, the Carlos C. Yasper account.

MR. LEVITES: That is what Mr. Morgan testified about. That is one of the prior applications Mr. Morgan testified about. That was the subject of the earlier similar act and the conviction therefrom.

THE COURT: What do you have to say, Mr. Reid?

MR. REID: Your Honor, I can understand showing other similar acts, but if you are going to bring in a judgment of conviction, this is a proof by his former conviction of his guilt here.

I understand the Government can show patent motivation and knowledge and intent, but I don't think they need to show it by bringing that conviction in. I will take exception to it, your Honor, only for the reason --

THE COURT: You sure have an exception.

MR. REID: Before you say I have an exception, your Honor, just understand this for a moment.

It's true that we have, even on cross-examination

elklm

Morgan - redirect

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I opened the door to past similar acts by questioning Mr. Morgan that he knew Mr. Yasper since 1970. or knew of the Yasper name. I am the first to admit that.

But, your Honor, showing prior similar acts through the other applications, but where we bring in a judgment of conviction, and although Mr. Yasper pleaded guilty there, that does, I think--and it's a discretionary matter with the trial Judge -- there is enough here that the defendant has to deal with rather than pouring water on a drowning man.

THE COURT: Will Mr. Yasper take the stand in this trial?

MR. REID: I can be candid with you right now, if you put that in it doesn't make any difference. He'd have to take the stand. My trial strategy was to have him take the stand, but if you bring that in the floodgates will open.

THE COURT: If you tell me you don't know whether he is going to testify in his own defense, I will allow this, and you have an exception.

MR. REID: I wasn't going to put him on the stand.

THE COURT: I will allow a plea. If you were to tell me that Mr. Yasper was going to take the

1	elklm	Morgan - redirect	90
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2 stand, and he does take the stand, I would hold this.

3 MR. REID: Actually, we are being forced
4 to take the stand now because if you admit it in --

5 THE COURT: You don't have to worry about
6 that.

7 MR. REID: Can I have my exception clearly
8 noted on the record?

9 THE COURT: You have your exception clearly
10 noted on the record.

11 (Pecess.)

THE COURT: I did want to say this, Mr. Reid. Rule 404B of these new rules of evidence says that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, at any time, and intent, preparatio-, plan, knowledge, identity, or absence from the State or accident.

21 MR. REID: The rule says it may. That is when
22 the new Federal rule of crime procedure were being passed
23 on by Congress, this is one of the things that was very
24 troublesome to the defense counsel, because if an indivi-
25 dual takes the stand and to put his character or any

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elklm Morgan - redirect

other thing in evidence, he is going to open up the door to past convictions. That is why proof of other similar crimes or intent or the grand scheme or design may --

THE COURT: Here I think it's admissible solely on the issue of knowledge and intent. And I will tell the jury that right now, and I will tell them that when I charge them.

It's not admitted for any other purpose.

MR. REID: My problem with that rule is that our legislators in their wisdom, used "may", but "may" always means "can". This is the problem. My exception is on the record.

THE COURT: You have an exception.

MR. REID: It hurts. You know why, your Honor, because it places us in a very queasy position.

THE COURT: I will do that. And you have an exception. And here is the exhibit.

MR. LEVITES: Let me just put on the record two matters. First of all, let me point out, as I indicated in a letter to MR. Ried, there is also, and I'm not going to seek this unless the defendant takes the stand, there is another conviction for fraudulent bank loan, a New York State conviction that I'm not going to get into unless he takes the stand. I may or may not

1 alklm

Morgan - redirect

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2 prove that act, but will not try to prove the conviction
3 or anything like it. I really dispute for the record
4 counsel's contention that he is somehow compelled to
5 forfeit his first amendment privilege.

6 I take it that your Honor has received,
7 you were going on Friday, Judge, we superseded this
8 indictment as to address in a count.

9 THE COURT: The address of the American
10 Express Company. I checked that. That was the only
11 change in it.

12 MR. LEVITES: That was the only change. I
13 take it you received the papers.

14 THE COURT: I did.

15 MR. REID: Mr. Levites told me he was going
16 to do that.

17 THE COURT: From some avenue to post office
18 box so and so.

19 MR. REID: Could I have a stipulation from
20 Mr. Levites that one of these cards was not mailed, it
21 was hand-delivered to -- and I missed it on cross--
22 examination because I thought this was the complete
23 application, but it says on the back, and I didn't
24 know because it was this way, when I was questioning
25 Mr. Morgan with respect to Mr. Anderson, this card was

1 alklm Morgan - redirect 93

2 issued at the request of Anderson who actually invites
3 Mr. C. Yasper to apply for a card, which was hand-
4 delivered, or never went through the United States
5 mail.

6 MR. LEVITES: I'm not going to stipulate
7 to that. Obviously that is an essential element of that
8 count.

9 MR. REID: And I want to ask Mr. Morgan this
10 because we could save time, if there is no postal
11 stamp on the --

12 THE COURT: He is on redirect. I will give
13 you a chance to ask him on recross.

14 All right. Bring in the jury.

15 (The jury entered the courtroom.)

16 (At the side bar.)

17 THE COURT: What I'd like to do on this, I
18 don't want this whole indictment going in.

19 MR. REID: No problem, Judge. However you
20 think it best.

21 THE COURT: This can go in, this is the
22 judgment. I take it you have no objection to the
23 authenticity of the judgment?

24 MR. REID: No.

25 THE COURT: Either you can stipulate as to

1 alklm Morgan - redirect 94

2 the indictment is, or just put in -- I don't want all
3 this long business here. Stipulate what Count 4 was.

4 MR. LEVITES: You want to stipulate it was
5 a mail fraud?

6 MR. REID: I will stipulate only for the
7 record. I still have an exception to it.

8 MR. LEVITES: We will stipulate that Count 4
9 was a fraudulent credit card card count, and I will
10 mention the name Carlos Yasper.

11 (In open court.)

12 BY MR. LEVITES:

13 O I show you Government's Exhibit 28 in evi-
14 dence.

15 What is the name on that application,
16 again, that was submitted?

17 A Carlos C. Yasper.

18 MR. LEVITES: In a conference with our
19 prior conversations at the bench, I am offering only
20 Government's Exhibit 32 for identification into evidence.
21 I understand we will have a stipulation with resepect to
22 that.

23 THE COURT: We will, and I will receive
24 that exhibit. I understand there will be a stipulation.

xxx

25 (Government's Exhibit 32 was received in

2 evidence.

3 THE COURT: I'd like to say this, ladies
4 and gentlemen, you can read that judgment, but I'd like
5 to say to the ladies and gentlemen of the jury that I
6 am receiving this exhibit solely on the question of know-
7 ledge and intent of the defendant.

8 This refers to another offense, not the
9 offense in this indictment. I will tell you that again
10 later, that you are going to consider this evidence
11 solely when you consider the motive and the knowledge
12 of the defendant in connection with the crimes with
13 which he is charged in this indictment, and for no
14 other purpose.

15 MR. LEVITES: Ladies and gentlemen, this
16 will be available to you later, as will all the other
17 evidence.

18 Government's Exhibit 32 in evidence reads
19 as follows: United States District Court for the
20 Southern District of New York. United States of America
21 versus Casper Alexander Yasper, 72 Criminal 979.

22 On this eleventh day of May, May 11, 1973
23 pursuant to Rule 35 of the Federal Rules of Crime
24 Procedure, the Court amends its judgment of January 26,
25 1973 solely to the extend indicated below.

alklm

Morgan - redirect

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1 It is adjudged that the defendant upon his
2 plea of guilty and the Court being satisfied that there
3 is a factual basis for the plea, has been convicted of
4 the offense of wilfully and knowingly using the mails
5 in a scheme and artifice to defraud, violation of
6 Title 18, United States Code, Section 1341, as charged
7 in Count 4 of the indictment. That is this document
8 in pertinent part.

9 It's signed Charles M. Metzner, United States
10 District Judge. This is a certified copy from the
11 Federal archives from 1972.

12 I believe it is stipulated, your Honor,
13 between myself and Mr. Reid in lieu of certain other
14 exhibits the Government had planned to enter, that this
15 plea of guilty to Count 4 had to do with a mail fraud
16 allegation concerning a credit card in the name Carlos
17 Yasper; is that correct, counsel?

18 MR. REID: That's correct, your Honor. But
19 the record still reflects my objection.

20 THE COURT: It was a credit card of American
21 Express Company.

22 MR. LEVITES: Yes. In the name Carlos C.
23 Yasper.

24 Thank you. No further questions.

Carl J. Mione (Direct Examination)

Appendix Pages A-20 to A-31

(Transcript Pages 196 to 207)

1 elklm Matusiak - redirect 196
2 MR. LEVITES: Thank you. You are excused.
3 MR. REID: No further questions.
4 THE COURT: Thank you.
5 (Witness excused.)
6 MR. LEVITES. The Government calls Mr. Mione
7 to the stand.
8 C A R L J. M I O N E, called as a witness
9 by the Government, being first duly sworn, testi-
10 fied as follows:
11 DIRECT EXAMINATION
12 BY MR. LEVITES:
13 Q Mr. Mione, by whom are you employed, and in
14 what capacity?
15 A I am an inspector for Diners Club Credit
16 Card Company.
17 Q What are your duties as an inspector for
18 the Diners Club?
19 A I conduct investigations relative to fraud --
20 Q Please keep your voice up nice and loud.
21 A I conduct investigations relative to fraud,
22 lost credit cards, fraudulent applications.
23 THE COURT: How long have you worked for
24 Diners Club?
25 THE WITNESS: I am with Diners Club

XXX

1 elklm Mione - direct 197
2 approximately a year and a half.

3 Q Where were you before you were with Diners
4 Club?

5 A I was a member of the New York City Police
6 Department for approximately 25 years.

7 Q In what capacity, sir?

8 A As a detective.

9 Q You received a subpoena for certain records,
10 did you not?

11 A Yes, sir.

12 Q You brought those records with you today?

13 A Yes, sir.

14 MR. LEVITES: I am showing Mr. Reid Govern-
15 ment's Exhibits 46 through 51 for identification.

16 MR. REID: I have no objection to admitting
17 them into evidence, your Honor, but if you could just
18 give me a minute, I wanted to peruse something.

19 THE COURT: Sure.

20 (Pause.)

xxx

21 (Government's Exhibits 46 through 51 were
22 received in evidence.)

23 Q Did you receive a subpoena for records of
24 Diners Club having reference to which names?

25 A Yasper, Casper; C.A. Casper, Charles Casper -

2 n Casper or Yasper?

4 Q Let me show you the exhibits, sir. These
5 are from the records of the Diners Club? Look at each
6 document.

8 A Yes, sir, these are records of the Diners
9 Club.

11 THE COURT: Not tell us what they are --

15 In the course of the search that you made
16 of your own records did you find that the Diners Club
17 had received applications from an individual with the
18 last name Vagner?

20 Q What are 46, 47, and 48 in evidence? What
21 are they, sir?

24 Q Would you give us the names that were sub-
25 mitted?

1 elklm Mione - direct 199

2 A Yes. On Exhibit Number 46, the name is
3 Charles A. Yasper. On Exhibit Number 47, the name
4 indicates C.A. Yasper. And on Exhibit Number 48 the
5 name indicates Curtis Yasper.

6 Q What is the employment and other personal
7 background data given on each application? Would you
8 read that?

9 A On Exhibit 46, the employment, the name
10 of the firm or employer is Virgin Island Government,
11 Information Tour Office.

12 Q What's the birth date on that?

13 A The date of birth, sir?

14 Q Yes, sir.

15 MR. REID: Could we have the date of the
16 application, your Honor?

17 THE COURT: Yes.

18 Q Give us the date of the application as well,
19 Mr. Mione.

20 A The date this application was submitted,
21 it appears to me in 1970, it appears to be May 21st of
22 1970.

23 Q That is Government's Exhibit 46 in evidence ✓
24 you are referring to?

25 A That is Number 46, sir. A credit card was

1 elklm Mione - direct 200

2 issued here.

3 Q Pick up 47 and tell us the employment and
4 the date of that application.

5 A The date of this application, it appears
6 that the date here that -- it appears to be March 25,
7 1970 -- May 25, 1970 when it was received in Diners
8 Club. It's not too clear here, the place of employment.

9 Q Was a card issued in that account?

10 A Yes, it was.

11 Q What was the name there?

12 A The name on this account was C.A. Jasper.

13 Q Now take 48.

14 A 48, the name --

15 THE COURT: What's the date of it.

16 THE WITNESS: The date, sir, it appears to be
17 November of 1970. The name on the application is
18 Curtis Jasper. It's not too clear here the firm or
19 employer. The nature of business is travel agent.

20 Q Tell me, sir, was a card issued on that one?

21 A Yes, sir.

22 Q Did there come a time when those cards were
23 revoked?

24 A Yes, these cards were cancelled.

25 Q Why were they cancelled?

A-25

1 elklm Mione - direct 201

2 A They were cancelled for non-payment of

3 the charges.

4 Q What was the unpaid balance, total unpaid

5 balance?

6 A \$11,430.27 on three credit cards.

7 Q That was back in '70 and '71 --

8 THE COURT: Can you tell when it was can-

9 celled?

10 THE WITNESS: It was cancelled in 1971.

11 Q Did there come a time when you had occasion

12 to receive still more applications from a man named

13 Yasper?

14 A Yes, sir.

15 Q I show you Government's Exhibits 50 and 51.

16 That is an application for a Diners Club card.

17 What is the date of that application, sir?

18 A This application was sent in on 5/16 of

19 1975.

20 Q Who is the applicant?

21 A The applicant is Casper A. Yasper.

22 Q Where does he give his employment?

23 A New York State Senate.

24 Q What position does he give?

25 A As a counsel.

1 elklm

Mione - direct

202

2 Q What's the income stated there?

3 A \$36,000 per year.

4 Q That was in May of '75, right?

5 A Exactly.

6 Q Now I show you Government's Exhibit 51 for
7 identification.

8 Q Who is the applicant there?

9 A The applicant is Casper A. Yasper.

10 Q What employment does he give?

11 A New York State Senate. Nature of business,
12 government. Position -- it appears to be director.

13 Q What word is that, sir, before director?

14 A (No response.)

15 Q Read us the letters that appear, if you
16 can't make out the word.

17 A (No response.)

18 Q Give me the exhibit a minute.

19 Government's Exhibit 51 in evidence, which
20 the jury of course can see, under position, it says
21 executive, e-x-e-c, director.

22 MR. REID: What does that say?

23 MR. LEVITES: Executive director.

24 THE COURT: You say that.

25 Does that look like executive director to you?

1 elklm Mione - direct 203

2 THE WITNESS: Yes, it does.

3 Q These two applications from Casper A. Jasper --
4 when was Government's Exhibit 51 received by you?

5 A This was received on the sixteenth of June.

6 Q So you got Government's Exhibit 50 --

7 THE COURT: Sixteenth of June, what year?

8 THE WITNESS: 1975.

9 Q So you got Government's Exhibit 50 in May
10 of '75, Government's Exhibit 51 in June of '75; is
11 that correct?

12 A Exhibit 50 --

13 Q Is in May?

14 A Right. And received on the ninth of June,
15 1975.

16 Q And Exhibit 51 was also received later in
17 June?

18 A Right.

19 Q What salary does Mr. Jasper give on 51 for
20 the position of executive director?

21 A He gives a salary of \$36,000.

22 Q Also.

23 A Also.

24 Q How many years does it say he was with the
25 Senate there?

1 elklm Mione - direct 204

2 A Five years.

3 Q And on Government's Exhibit 50 that arrived
4 the same month?

5 A Six years.

6 Q Were cards issued for Government's Exhibit
7 50 and 51?

8 A No, sir.

9 Q Why not?

10 A Due to the fact that Diners Club had three
11 cards issued to, issued prior to receiving these two
12 applications, referring to 50 and 51. We observed the
13 name and we declined the two applications.

14 Q I show you Government's Exhibit 49 in evi-
15 dence.

16 What is 49?

17 A 49, it's a normal procedure with Diners
18 Club to send out a letter of verification of employment
19 when an individual submits an application. This is
20 a letter of verification of employment sent out to the
21 place of business where the applicant --

22 THE COURT: Is there a date on it?

23 THE WITNESS: Yes. This is dated, this was
24 sent out June 17th of 1975 to the New York State Senate,
25 LEB, Room 907, Albany, New York, zip code 12224, Attention

elklm

Mione - direct

205

personnel.

We received this letter, in Diners Club, we received it back from the New York State Senate on June 23, 1975 at 4:40 p.m.

Q Read us that letter, if you will.

A All right. It says, "Attention personnel. Applicant Casper A. Yasper, social security number 580-10-5708. Gentlemen: The above-named individual has applied for Diners Club membership, naming your organization as employer. Since membership cannot be considered without confirmation of employment, it would be helpful to us and an accommodation for your employee if you provide us with the information listed below. Thank you for your assistance. Title or position: counsel. Employed since --

Q The part that you are now reading --

A The part that I am now reading was filled in by somebody at the place of employment.

MR. REID: Let us know who filled it in, not somebody.

THE COURT: Is there a name on that?

MR. LEVITES: Yes, there is a name.

THE COURT: Can you tell who filled it in?

THE WITNESS: It's signed on the bottom.

1 elklm

Mione - direct

206

2 Q Who signed that?

3 A It's Vander L. Beatty, State Senator, 23SD,
4 6/9/75.

5 Q Before we go any further, I show you Govern-
6 ment's Exhibit 36 for identification, New York State
7 Senate Employment Record.

8 Do you see where it says employer seniority
9 signature for the year 1975, Manfred Ohrenstein?

10 A Yes, sir.

11 Q This was 1975, right?

12 A It's dated June 9, 1975.

13 Q And you see at the bottom printing that says
14 additional information which will help us evaluate
15 individual as a credit risk. And there is printed,
16 "Good, honest employee. Trust him with all phases of
17 my operation. He has a four-year contract. Position:
18 Counsel. Salary: \$36,000 a year."

19 MR. LEVITES: While the jury is looking,
20 may we have a brief side bar, your Honor?

21 THE COURT: Yes.

22 (At the side bar.)

23 MR. LEVITES: I would like to ask counsel
24 if he would at this time stipulate that that is not
25 Senator Vander Beatty's signature, or I will call

1 elklm Mione - direct

207

2 Senator Vander Beatty.

3 MR. REID: You are putting me in a box. I
4 don't know what to do. I am just a lawyer. I was not
5 employed by the New York Senate, I know some of these
6 people, but I don't know whose signature that is. I'm
7 not going to vouch for it. The same way I opened up
8 this morning.

9 MR. LEVITES: May I recall Mr. Matusiak after
10 this? He is still here.

11 THE COURT: Sure. If he knows his signature.

12 MR. REID: Let me say something --

13 THE COURT: That's fair.

14 (In open court.)

15 THE COURT: Any more questions of the
16 witness?

17 MR. LEVITES: No, your Honor. Your witness.

18 CROSS-EXAMINATION

19 BY MR. REID:

20 Q Good morning, Mr. Mione.

21 Let me hand you Government's Exhibits 50
22 and 51.

23 You have been employed by Diners Club for
24 a year and a half; is that correct?

25 A That's right.

xxx

Reginald A. Austin (Direct Examination)

Appendix Pages A-32 to A-42

(Transcript Pages 217 to 227)

1 elklm Matusiak - direct 217
2 your Honor. I just point out that the jury can compare
3 the two signatures later if they so chose.

4 No further questions.

5 MR. REID: No questions, your Honor.

6 THE COURT: Thank you. You are excused.

7 (Witness excused.)

8 MR. LEVITES: The Government calls Reginald
9 Austin to the stand.

10 R E G I N A L D A . A U S T I N , called as
11 a witness by the Government, being first duly
12 sworn, testified as follows:

xxx 13 DIRECT EXAMINATION

14 BY MR. LEVITES:

15 Q Mr. Austin, would you please tell the
16 Court and jury by whom you are employed?

17 A I am employed by Chase Bank as a special
18 investigator.

19 Q Chase Manhattan Bank?

20 A That's right, sir.

21 Q Do you have any particular duties and
22 tell us what you do as a special investigator?

23 A My job entails investigation of fraud, theft
24 of cards, credit cards.

25 Q You specialize in credit cards?

1 elklm Austin - direct 218

2 A Yes, sir.

3 Q Of which system is Chase -- what kind of
4 credit card do you issue?

5 A Chase Bank Americard.

6 Q I show you Government's Exhibits 52 and 53.

7 THE COURT: How long have you worked for
8 the Chase Bank, sir?

9 THE WITNESS: Approximately two years.

10 Q What did you do before that, sir?

11 A I was employed by New York City Police
12 Department as a detective.

13 Q For how many years?

14 A Twenty years.

15 MR. REID: I have no objection to Govern-
16 ment's Exhibits 52 and 53 going into evidence.

17 (Government's Exhibits 52 and 53 were re-
18 ceived in evidence.)

19 Q Tell us if you will, look first at Govern-
20 ment's Exhibit 53 and then at Government's Exhibit 52.

21 Tell us first what Government's Exhibit 53
22 is.

23 A Government's Exhibit 53 is a time saver
24 credit card application.

25 Q What is a time saver credit card application?

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Austin - direct

219

A This is an application whereby the applicant can request a number of credit cards by submitting one application.

Q When you say a number, do you mean more than one or do you mean more than one kind of credit card?

A More than one kind of credit card.

Q In other words, the time saver goes to Bank Americard, Master Charge, American Express, Diners, all of those, and you just fill out this one centralized application?

A That's correct, sir.

Q Pursuant to that, whose name is on that Government's Exhibit 53?

A Well, I see it has a C.A. Yasper, and there is a signature on top of that dated January 22, 1977.

THE COURT: Would you kindly keep your voice up, Mr. Austin. I want to be sure that these gentlemen in the back table can hear you.

Q Look at Government's Exhibit 52, if you will, and tell us what 52 is.

A 52 is a Chase Bank Americard application.

Q On 53 had Mr. Yasper indicated Bank Americard?

1 olklm

Austin - direct

220

2 A There is an indication of a Chase Bank American
3 indication there, yes, sir.

4 Q Now 52 is the Chase Manhattan Bank Americard
5 application?

6 A That's correct, sir.

7 Q What name appears on that?

8 A We have C. as the first name, Alex is the
9 middle initial, and the last name is Yasper.

10 Q Is there a spot on here that calls for a
11 listing of all present obligations and credit references?

12 A Yes, sir, there is.

13 THE COURT: Which exhibit are you talking
14 about?

15 MR. LEVITES: Government's Exhibit 52,
16 your Honor. Sorry.

17 Q And is there a spot where it says the
18 undersigned certifies the above information is true and
19 complete?

20 A Yes, sir.

21 Q Tell us what information appears by --
22 what was filled in by Mr. Yasper --

23 THE COURT: What appears on the application.

24 Q On the application under the name of Mr.
25 Yasper, what debts are listed?

1 elklm Austin - direct 221

2 A It lists Saks New York, and it gives an
3 account number as 97581111. Underneath that it has
4 Chinese American Bank --

5 Q You don't have to give us the account number.

6 Is there any references to American Express
7 or Diners Club on that?

8 A No, sir.

9 Q Was a card ever issued to Mr. Vasper pur-
10 suant to this application?

11 A Yes, sir.

12 Q Before we go into details of that, what is
13 the birth date on this application?

14 A Date of birth is listed as the fourth month,
15 fourteenth day of the '34 year.

16 Q 1934?

17 A 1934.

18 Q What is the address given on the Bank
19 Americard application?

20 A The address is listed as 69 Tiemann Place,
21 Apartment 8, New York, New York, zip code 10025.

22 Q Tiemann is T-i-e-m-a-n-n?

23 A That's correct, sir.

24 Q Did you have occasion prior to the issuance
25 of the card, to compare or to conduct an investigation

1 elklm Austin - direct 222

2 with reference to this application?

3 A I did, sir.

4 Q Did you have occasion to prepare and investi-
5 gate the information provided on Government's Exhibit
6 52 with the information provided on Government's Exhibit
7 53?

8 A My investigation entailed Government's
9 Exhibit 52.

10 Q What did you do?

11 A I received this application, I scanned it,
12 I went to 69 Ticmann Place, I interviewed a gentleman --

13 Q Don't tell us what was said there. You con-
14 ducted an interview.

15 MR. REID: He can tell us what was said,
16 your Honor. I won't object to it as hearsay.

17 MR. LEVITES: Let counsel ask what he wants
18 to ask.

19 THE COURT: What did you do after that?

20 THE WITNESS: After that, I compared the
21 information contained in Government's Exhibit Number 52
22 with another application that I had received.

23 Q From whom?

24 A This was from our credit department, which
25 was an application for a personal loan --

1 elkin Austin - direct 223

2 Q A bank loan?

3 A Bank loan, made out in Albany, New York.

4 Q What address did that bank loan application

5 have?

6 A That application gave an address in Menands,

7 New York.

8 Q What was the name on that application?

9 A C.A. Yasper. To be sure, if I can refer

10 to my notes, I could give you the exact name.

11 Q Please do, sir.

12 THE COURT: You can go ahead.

13 (Pause.)

14 A This application was made out in the

15 name of C. Alex Yasper, the home address was given as

16 587 Broadway, Apartment 12C, Menands, New York.

17 Q That is the same address as appears on

18 Government's Exhibit 53; is it not?

19 A That's correct, sir. He lists as being a

20 resident there for six years.

21 Q Did you then have occasion to conduct in-

22 quiries with reference to the Menands address?

23 A I did, sir.

24 Q What did you find?

25 A I had conversations with Menands, New York

A-39

elklm

Austin - direct

224

at the renting office, with the renting agent. And at the conclusion of that interview I returned to my office and forwarded a letter to the listed applicant's place of employment for verification; name, address, social security number.

Q Did you find out whether the Menands address was correct or incorrect?

A I found out that the Menands address was incorrect.

Q How did you know?

A From the letter received from the applicant's employment office, there was a verification.

Q Different address given?

A Different address was listed.

Q Where was the employment office?

A That was in Albany, New York at Senator Ohrenstein's office.

Q They didn't give you the Menands address?

A No, sir.

Q Do you happen to recall, do you know who does live at that address in Menands?

A If I can take a peek I can give you that information. It was given to me.

Q Sure.

elklm

Austin - direct

225

(Pause.)

A I was informed that that address was listed to a Kenneth French.

Q Having conducted this inquiry, you testified that a card was issued.

What was the purpose of issuing that card? Was it issued in the normal course of your business, or was there some special reason?

A There was a special reason, sir. If I may go into it --

Q Just tell us this.

Had you had occasion to contact the postal inspection service about this matter?

A Yes, at the conclusion of my investigation as to the applicant's residence, which showed a variance in place, I contacted the postal authorities and advised them as to the information that I had.

Q Did you make arrangements for postal inspectors to be present on the day this card was to be issued?

A I did, sir.

Q Were they in fact present?

A They were, sir.

Q Was Inspector DuPilka one of the inspectors

elklm Austin - direct

226

present?

A That's correct.

Q Were you also present?

A I was also present.

Q Did you see the man who came in to pick
up the card?

A I did, sir.

Q Do you see him in the courtroom today?

MR. REID: We'll concede identification,
your Honor.

THE COURT: Thank you.

Q Without going into what was said on that
occasion, did you hear Inspector DuPilka advise the
defendant of his Constitutional rights?

MR. REID: I object to the question, your
Honor, because it's leading. It presupposes that he
was present.

THE COURT: He said he was present. I
will let him answer whether he recalls the inspector
giving the Constitutional rights to Mr. Yasper.

Did you hear that?

THE WITNESS: I did, sir.

Q Did you have occasion to check out that 1934
birth date on that? Was that part of your investigation?

1 elkln Austin - direct 227

2 Did you ever get to that?

3 A I may have compared that with the information.

4 Q If you don't remember, say so.

5 A I don't remember.

6 MR. LEVITES: No further questions.

7 THE COURT: Would you like to see the witness's
8 notes?

9 MR. REID: No, your Honor.

10 THE COURT: All right.

xxx

11 CROSS-EXAMINATION

12 BY MR. REID:

13 Q Mr. Austin, what branch of Chase Manhattan
14 branch was the notification sent for Mr. Yasper to pick
15 up this card? Which branch was he to come to?

16 A That was located in Manhattan, Fifth Avenue
17 and 135th Street.

18 Q On what date did Mr. Yasper arrive, Mr.
19 Austin, at that branch?

20 A Might I refer to my notes?

21 Q Yes, sir.

22 (Pause.)

23 A This was April 11, 1977.

24 Q Approximately what time?

25 A I would say between the hours of 9:00 and

Carmine Cenatiempo (Direct Examination)

Appendix Pages A-43 to A-48

(Transcript Pages 239 to 244)

1 elklm Austin - cross

239

2 making?

3 A He made a statement to the effect that, am I
4 going to be arrested, this thing is going to take all
5 day, let's go downtown.

6 Q And that's all you remember?

7 A Yes, sir.

8 MR. REID: No further questions.

9 MR. LEVITES: Thanks a lot, Mr. Austin.

10 THE COURT: You are excused.

11 (Witness excused.)

12 THE COURT: Would this be a good time to
13 take a lunch recess?

14 MR. LEVITES: I have one short witness.

15 THE COURT: All right.

16 MR. LEVITES: Carmine Cenatiempo.

17 C A R M I N E C E N A T I E M P O, called as a
18 witness by the Government, being first duly sworn,
19 testified as follows:

xxx

20 DIRECT EXAMINATION

21 BY MR. LEVITES:

22 Q Mr. Cenatiempo, by whom are you employed?

23 A Manufacturers Hanover Trust Company.

24 Q What do you do for Manufacturers Hanover?

25 A I work in their personal loan department. I

1 elklm Cenatiempo - direct

240

2 am a supervisor at the present time.

3 Q For how many years have you been so employed?

4 A Fifteen years.

5 Q I show you Government's Exhibits 54 and 55
6 for identification.

7 MR. REID: Your Honor, I consent to 54
8 and 55.

9 THE COURT: They are received.

xxx

10 (Government's Exhibits 54 and 55 were
11 received in evidence.)

12 Q You had a subpoena served on you by the
13 United States Attorney's office, did you not?

14 A Yes, sir.

15 Q For certain bank records?

16 A Yes, sir.

17 Q I show you Government's Exhibits 54 and 55
18 in evidence and ask you if you will tell the members
19 of the jury what those documents are.

20 THE COURT: Start with one at a time.

21 Q Start with 54, please.

22 A 54 is a personal loan application in the
23 name of Casper A. Yasper, submitted on December 7,
24 1973.

25 Q How much does it ask for?

1 elklm Cenatiempo - direct 241

2 A \$2,376. ✓

3 Q Was that granted?

4 A No, sir.

5 Q What about the other one?

6 A Exhibit 55 is a personal loan application
7 to Manufacturers Hanover Trust Company in the name of
8 Cornelius Vasper for \$2,376. submitted on February 3,
9 1974.

10 Q What are the two addresses given? Refer
11 to the exhibit number.

12 A The home address on Exhibit 54 is 880 Eighth
13 Avenue. The place of employment is New York Medical
14 College, 1249 Fifth Avenue.

15 On Exhibit 55 the home address is shown as
16 2065 First Avenue, New York, and the place of employ-
17 ment is the New York Medical College, 1249 Fifth Avenue.

18 Q That is Cornelius Vasper?

19 A Yes, sir.

20 Q Did you grant that loan?

21 Q Yes.

22 Q Did you grant it in the normal course of
23 your business or for a special reason?

24 A For a special reason.

25 Q Who asked you to grant the loan, without

1 elklm Cenatiempo - direct 242

2 going into it any further?

3 A Our credit committee approved the loan at
4 my request.

5 Q What was the purpose of your request?

6 A I wished to speak to Mr. Jasper. We had
7 the check drawn and asked Mr. Jasper to come down to
8 our bank to pick up the check.

9 Q Who else knew he was coming down to your
10 bank to pick up the check that day?

11 A A man from our security office, Mr. John
12 Campbell.

13 Q Was he there that day in connection with this?

14 A Yes, sir.

15 Q Did Mr. Jasper ever receive this money for
16 his own use?

17 A Yes.

18 Q Did he ever get to cash the check?

19 A No, he never cashed the check.

20 THE COURT: When did this happen?

21 THE WITNESS: I believe it was February 11th.

22 The report that I gave you shows that.

23 THE COURT: February 11th of what year?

24 THE WITNESS: '74.

25 (Pause.)

1 elklm Cenatiempo - direct 243

2 THE WITNESS: No, I'm sorry, that was
3 February 21st, 1974.

4 Q Do you have a birth date on this applica-
5 tion?

6 A Yes.

7 Q What date of birth appears on Government's
8 Exhibit 55 in evidence?

9 A On Exhibit 55 the date of birth is shown
10 as October 27, 1932.

11 Q And the social security number?

12 A Shown as 580-10-0875.

13 Q That is Cornelius Yasper?

14 A Yes, sir.

15 Q Born 10/27/32?

16 A Yes.

17 Q With that social security number?

18 A Yes.

19 Q Now give us the birth date and social
20 security number from Casper Yasper.

21 A On Exhibit 54, the name of Casper Yasper,
22 the date of birth is shown as October 27, 1932, the
23 social security is shown as 580-10-0875.

24 Q Did you ascertain that these are one and
25 the same individual?

1 elklm

Cenatiempo - cross

244

2 A Well, what I had ascertained was that an
3 individual came into our branch on February 21st and
4 identified himself as Cornelius Jasper, in my presence.

5 Q Who was that individual? Do you see him
6 in the courtroom today?

7 A Yes, sir.

8 MR. REID: Conceded, your Honor.

9 MR. LEVITES: You are conceding that the
10 defendant was Cornelius Jasper that day.

11 MR. REID: No, that the defendant seated
12 here was the individual that Mr. Cenatiempo saw.

13 MR. LEVITES: No further questions.

xxx

14 CROSS-EXAMINATION

15 BY MR. REID:

16 Q Mr. Cenatiempo, are those applications,
17 which are Government exhibits, when you received those
18 applications, you knew immediately something, you got a
19 red flag or a flasher warning; is that not correct?

20 A What happened was, I received a phone call
21 from another bank, which gave me various names and ad-
22 dresses, which I ran through our liability files and we
23 picked up these applications.

24 Q But after you received that information,
25 and isn't that unusual -- you work in the credit

Jeffery DuPilka (Direct Examination)

Appendix Pages A-49 to A-59

(Transcript Pages 283 to 293)

A-49

283

1 elklm

2 the subpoenas --

3 MR. REID: I will do my own housekeeping,
4 Mr. Levites.

5 THE COURT: I really don't understand what
6 you are talking about, Mr. Levites.

7 MR. REID: I subpoenaed 3 witnesses from
8 American Express and they have not shown up yet.

9 What are we going to do about that?

10 THE COURT: I will worry about that. Let's
11 get through with the Government's case here.

12 (The jury entered the courtroom.)

13 THE COURT: Ladies and gentlemen, good
14 afternoon. I apologize for the delay. We had one of
15 these administrative matters that sometimes slow up
16 trials, and I'm sorry we delayed you this afternoon.

17 Will you swear the witness?

18 J E F F R E Y D U P I L K A, called as a
19 witness by the Government, being first duly sworn,
20 testified as follows:

xxx

21 DIRECT EXAMINATION

22 BY MR. LEVITES:

23 Q Mr. DuPilka, please tell the Court and the
24 members of the jury by whom you are employed and in
25 what capacity.

1 elklm Du Pilka - direct 284

2 A I am employed by the United States Postal
3 Inspection Service as a postal inspector.

4 Q For how long have you been so employed?

5 A A little over three years.

6 Q To which section of the United States
7 Postal Inspection Service are you assigned?

8 A The fraud section.

9 Q Did there come a time in the course of your
10 official duties when you had occasion to conduct an
11 inquiry with respect to Casper Yasper?

12 A Yes.

13 Q Do you know Casper Yasper? Do you see him
14 in the courtroom?

15 A Yes.

16 MR. REID: Identification conceded, your
17 Honor.

18 THE COURT: All right.

19 Q Did there come a time when you had occasion
20 to take Casper Yasper into custody?

21 A Yes.

22 Q Would you briefly describe for the Court
23 and members of the jury the circumstances of that arrest?

24 A On April 11, 1977 I was at a bank on 135th
25 Street in New York.

1 elklm DuPilka - direct 285

2 Q Which bank, sir, and please keep your voice
3 up?

4 A Chase Manhattan Bank. Mr. Yasper had come
5 in to pick up a Bank Americard issued by Chase Manhattan.
6 At the time he came in, I identified myself, along with
7 another inspector.

8 Q Who was that inspector?

9 A Inspector David Liebov.

10 Q Who else was present?

11 A Reginald Austin.

12 Q Who is he?

13 A He is an investigator for Chase Manhattan
14 Bank Americard.

15 Q That is the same Mr. Austin who was in
16 the witness room with you this morning?

17 A It is. We asked that Mr. Yasper accompany
18 us to another area of the bank so that we could inter-
19 view him regarding the credit card application which he
20 had submitted. He agreed.

21 Q Was he under arrest at that time?

22 A No, he was not.

23 Q What happened when you got downstairs?

24 A We went to a location downstairs in the bank.
25 We advised Mr. Yasper that we were investigating a

elklm

DuPilka - direct

286

possible violation of the mail fraud statute and we
advised him of his rights against self-incrimination.

Q I show you Government's Exhibit 56, and I
will offer it into evidence.

THE COURT: Any objection?

MR. REID: I don't know what it is.

THE COURT: You saw it before.

MR. REID: Oh. No problem, your Honor.

THE COURT: It will be received.

(Government's Exhibit 56 was received in
evidence.)

Q Did you read Mr. Yasper's rights from this?

A Mr. Yasper was read his rights and he read
along with us.

MR. REID: I don't have any problem with 56
being admitted into evidence, but there is a portion
of it that I think may not be evidence at this point.

THE COURT: Let's not worry about that.

Did you read those rights to Mr. Yasper?

THE WITNESS: Yes.

THE COURT: Then read them to the jury.

(The witness read to the jury from Govern-
ment's Exhibit 56 in evidence.)

Q After you read Mr. Yasper's rights, you say

1 elklm DuPilka - direct 287

2 Inspector Liebov and Mr. Austin were present when this

3 was done?

4 A They were.

5 Q Did Mr. Yasper sign that document?

6 A No, he did not.

7 Q What did he say to you?

8 A It's noted --

9 Q Don't tell us --

10 THE COURT: No, just tell us what he said.

11 A He said that he didn't want to sign the form

12 but that he'd answer questions.

13 Q Even though he wasn't under arrest, you gave

14 him his rights?

15 MR. REID: I object to the gratuity.

16 THE COURT: I sustain the objection to the

17 form of the question.

18 Was he under arrest at that time?

19 THE WITNESS: He was not under arrest.

20 Q Did Mr. Yasper say anything to you about the

21 Bank Americard applications or American Express applica-

22 tions in this indictment, at that time?

23 A No, he did not.

24 Q Did there come a time you accompanied him

25 to the United States Attorney's office?

elklm

DuPilka - direct

288

2 A Yes.

3 Q Before we go to that point, describe
4 briefly the circumstances under which he was arrested.
5 You said you read him the statement --

6 THE COURT: Don't repeat all the testimony.
7 What happened after you read the statement?

8 THE WITNESS: We requested personal history
9 and back ground information from Mr. Yasper, such as
10 name, his date of birth, his social security number,
11 any relatives, employment.

12 Q Don't tell us any more.

13 What did you do then?

14 A He --

15 Q Don't tell us what he did. Tell us what you
16 did.

17 A After that I showed him the applications
18 for the Bank Americard and the American Express.

19 Q After that, what did you do?

20 A I left the room and called the United States
21 Attorney's office and presented the facts of the case,
22 and I was authorized to arrest Mr. Yasper.

23 THE COURT: Who did you talk to, if you re-
24 member?

25 THE WITNESS: The assistant criminal chief. I

1 elklm DuPilka - direct

289

2 don't remember which one it was.

3 Q Then what did you do?

4 A I went back into the other room where Mr.
5 Yasper was. I advised him that he was under arrest.
6 I searched him. And I allowed him to put on his coat
7 and then I handcuffed him.

8 Q Where did you take him?

9 A We then went upstairs in the bank to the
10 platform area and he was allowed to call somebody re-
11 garding his automobile. Then we left the bank in our
12 car and we took him to our office at Eighth Avenue and
13 33rd Street in the General Post Office.

14 Q What happened there?

15 A We photographed and fingerprinted Mr. Yasper.

16 Q Where, if anyplace, did you go after that?

17 A We went to the United States Attorney's
18 office.

19 Q Where did you take Mr. Yasper at the United
20 States Attorney's office?

21 A He was taken to the marshal for finger-
22 printing and photographing and later brought to your
23 office.

24 Q At my office what happened?

25 A You advised him of his Constitutional rights

1 elklm DuPilka - direct

2 against self-incrimination, and asked him questions
3 regarding his background.

4 Q Tell us what, if anything, he said, that you
5 recall.

6 A When you questioned him regarding his social
7 security number, he said he didn't want to discuss it
8 at that time, that he had 50 of them and we'd never
9 find out about it.

10 And when you questioned him regarding his
11 date of birth, he stated that there could have been a
12 hurricane or a typhoon that destroyed all the records,
13 because he had been born in the Virgin Islands. He
14 never volunteered his birth date.

15 Q Did you see notes being taken by me during
16 that time?

17 A Yes.

18 Q At the conclusion of that proceeding did you
19 sign the notes that were taken?

20 A Yes, I did.

21 Q Did Mr. Yasper initial the document?

22 A I believe he did.

23 MR. LEVITES: I offer 57 into evidence.

24 MR. REID: No problem, your Honor.

25 THE COURT: It will be received.

1 elklm DuPilka - direct 291

xxx

2 (Government's Exhibit 57 was received in
3 evidence.)

4 Q One further question, Inspector.

5 Are you familiar with a company named
6 Feedinco?

7 A Yes.

8 Q Can you tell us, do you know who the officers
9 of Feedinco Corporation are?

10 MR. REID: I object to the question, your
11 Honor. In fact, I move that the last answer be stricken.
12 I object to it and ask for a side bar offer of proof.

13 THE COURT: All right.

14 (At the side bar.)

15 THE COURT: What is Feedinco?

16 MR. REID: Feedinco is a corporation that
17 Yasber happens to be in with an individual who is a
18 lawyer and another individual created this corporation. It's
19 a defunct corporation.

20 THE COURT: What's the relationship.

21 MR. LEVITES: Because he filled out the
22 State forms and said he had no interest in any corporation,
23 and he lied on those forms.

24 THE COURT: How does this follow in?

25 MR. LEVITES: Because he has a brochure with

1 elklm DuPilka - direct

2 pictures, the proofs that Vasper lied on the State forms
3 when he said he had no financial interest in y corpora-
4 tion.

5 THE COURT: But is this fellow competent
6 to testify to that?

7 MR. LEVITES: He is supposed to have some
8 kind of booklet he was supposed to bring in.

9 THE COURT: Did he?

10 MR. LEVITES: I think he did.

11 Do you want me to check right now?

12 THE COURT: Yes.

13 (Pause.)

14 MR. REID: That is from the Ford Foundation,
15 June 22nd, 1970. Feedinco hasn't paid its corporate
16 franchise taxes since 1970, it's a defunct corporation.

17 MR. LEVITES: The answer is that the booklet
18 is upstairs.

19 THE COURT: Then forget it.

20 MR. REID: They haven't paid their corporate
21 franchise since 1970, they can't be -- all the Secretary
22 of State has to do is issue a certificate --

23 MR. LEVITES: Then ask that in rebuttal. He
24 filed a sworn statement stating he has no interest.

25 THE COURT: We'll worry about that when the

A-59

1 elklm DuPilka - direct 293

2 time comes.

3 (In open court.)

4 MR. REID: Your Honor, I presume the last
5 two questions are stricken?

6 THE COURT: Yes, the objection is sustained.

xxx

7 CROSS-EXAMINATION

8 BY MR. REID:

9 Q Inspector, when you first saw Mr. Yasper, it
10 was approximately 9:15 a.m. on April 11, 1977 at 135th
11 Street and Lenox Avenue, Chase Manhattan Bank; is that
12 correct?

13 A Yes.

14 Q When you approached him and showed him your
15 authority or badge, did he make any attempt to run
16 from you?

17 A No.

18 Q Did he make any attempt to strike you?

19 A No, he did not.

20 Q Did he use any profanity to you?

21 A No.

22 MR. LEVITES: What's the relevance? I move
23 to strike that all.

24 THE COURT: He answered the question.

25 Q After he made the telephone call in the

George Wolff (Cross Examination)

Appendix Pages A-60 to A-65

(Transcript Pages 436 to 441)

1 bakln Wolff - cross

2 A No.

3 Q So then in Government's Exhibit 1, 2 and
4 3, the fellow who made up these applications, he didn't --
5 he kind of neglected to mention any prior --

6 THE COURT: Don't characterize it. There
7 is no reference in the application. Okay, all right.

8 Q Again, if you would just speak up, is there
9 any indication on any of these three that there --
10 that you can see -- that the applicant in these three
11 instances had a prior American Express card of any kind?

12 A There was no indication.

13 Q I want to show you Government's Exhibit 64.
14 Did you have an opportunity before you came down here
15 to testify today to look, take one last look at your
16 records with reference to the name Yasper? Did you
17 cause to be conducted an additional search of your
18 records yesterday?

19 A What happened yesterday --

20 Q Tell me yes or no.

21 Was there an additional search made of
22 your records yesterday?

23 A Yes.

24 MR. LEVITES: Any objection, counsel?

25 MR. REID: None.

1 bsklm

Wolff - cross

437

2 MR. LEVITES: I will offer Government's
3 Exhibit 64 into evidence.

4 THE COURT: Received.

xxx

5 (Government's Exhibit 64 received in
6 evidence.)

7 Q Tell us what Government's Exhibit 64 is,
8 please?

9 A It is a credit card application, which,
10 as a result of a new front-end data capture system
11 that we have --

12 Q The jury doesn't know what a front-end
13 data capture system is, and --

14 A All right. We recently installed a new
15 procedure --

16 Q Your computer works better?

17 A Yes.

18 Q All right. It kicked out this?

19 A It kicked out this item as a match of
20 a potential fraud application because of similar --

21 MR. REID: One moment, your Honor. I'm
22 sorry. I thought that was a potential witness.

23 A As a potential fraud application because
24 there was a comparable application already in file.

25 Q In other words, your computer now makes

bsklm

Wolff - cross

438

1 better matches than it one time did?

2 A That's correct.

3 Q And what is the name on this application?

4 A This is C.A. Yasper.

5 Q When was Government's Exhibit 64 -- what
6 date does Government's Exhibit 64 have on it, when was
7 this application made out and dated by the applicant?

8 A 7/1/77.

9 Q That is the first date of this month?

10 A That's the first day of this month, yes.

11 Q What prior experience is given here, what
12 kind of card does the fellow who made that application
13 out say he had?

14 A Indicated that he was a supplementary card
15 member, the card wasn't in his name, but he had access
16 to the account with a supplementary card. It says
17 supplementary on the account.

18 Q This person who made out this application
19 doesn't say that he had one or more cards for himself,
20 ever?

21 A That's correct.

22 Q This is from C. A. Yasper, 1249 Fifth Avenue,
23 New York, New York; date of birth, 9/23/28; employed by
24 the New York Medical College. It's dated July 1, 1977.

1 bsklm

Wolff - cross

439

2 Did you issue a card on this application?

3 A No, we did not.

4 Q Congratulations.

5 THE COURT: Oh, no.

6 MR. REID: After Mr. Levitas' gratuitous .
7 statement I move for the withdrawal of a juror.8 THE COURT: the jury paid no attention to
9 that remark.

10 MR. LEVITES: I have one other question.

11 Q Take a look at Government's Exhibit 43 in
12 evidence, the 1977 record of employment at the New York
13 State Center, Casper Yasper.14 Read us the social security number that
15 appears thereon.

16 A 580-01-0857.

17 Q 0857.

18 Now read us the social security number on
19 this latest application, Government's Exhibit 64.

20 A 580-08-0157,

21 Q This one is 0857 and this one is 0157?

22 A Yes, and the other two digits also are
23 changed.

24 MR. LEVITES: No further questions.

25 MR. REID: No questions.

1 bsklm

2 (Witness excused.)

3 MR. REID: I have an application. Could
4 we break a little earlier this afternoon and --

5 THE COURT: I don't hear you.

6 MR. REID: Could we leave for lunch now,
7 your Honor, and return a little earlier?

8 THE COURT: Come to the side bar.

9 (At the side bar.)

10 MR. REID: I would like to break for lunch
11 now, your Honor, if it is possible. I have a little
12 problem with my nose.

13 THE COURT: Any more witnesses?

14 MR. REID: Only the defendant, your Honor.

15 THE COURT: All right.

16 MR. LEVITES: I want to mention on the record
17 that Mr. Wolff was prepared to testify -- this man here,
18 he went back last night at my instructions and he
19 pulled out 30 applications that came in in this morning's
20 mail without a postmark, came in this morning's mail. He
21 was prepared to testify --

22 THE COURT: I won't change the ruling on
23 that.

24 MR. REID: Mr. Levites, it was --

25 THE COURT: Nevermind.

1 bsklm

2 (In open court.)

3 THE COURT: Ladies and gentlemen, we will
4 take a luncheon break now. Return at 2:00 o'clock.

5 (Jury excused.)

6 (Luncheon recess taken.)

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Colloquy between Court and Counsel

Appendix Pages A-66 to A-67a

(Transcript Pages 443 to 445)

1 bsklw

2 the jury.

3 MR. LEVITES: Let me ask your Honor if
4 you will permit me to recall Mr. DePilka to put in the
5 remainder of the inculpatory statements which you had
6 indicated, you suggested I use in rebuttal, in which
7 Mr. Yasner admitted that he made up these -- two of
8 these three cards incorrectly because he knew he wouldn't
9 get credit, under his name as it truthfully is, from
10 American Express?

11 I think that goes clearly to intent.

12 THE COURT: No. I am going to leave it as
13 it is.

14 Bring in the jury, please.

15 (Jury present.)

16 THE COURT: Mr. Reid.

17 MR. REID: The defense rests, your Honor.

18 THE COURT: All right.

19 Does the Government have anything on
20 rebuttal?

21 MR. LEVITES: There is one piece of evidence
22 I would like to offer.

23 May we approach?

24 (At the side bar.)

25 MR. LEVITES: I would like to put into

1 bsklm

2 evidence -- I was to use it for cross -- the certificate
3 of conviction of Mr. Vasper's 1974 conviction for
4 attempted falsification of business records in connec-
5 tion with his bank loan at Manufacturer's Hanover Trust.

6 I believe that that is a similar act, also,
7 falsification of business records, and I was going to
8 use it for cross-examination purposes, but I think
9 I have the certificate here --

10 MR. REID: I will stipulate to it. I
11 will mention it in my summation.

12 THE COURT: You will stipulate to it?

13 MR. REID: Yes.

14 MR. LEVITES: Mr. Reid, do you want to
15 look at this document?

16 MR. REID: I will stipulate to it.

17 MR. LEVITES: You know what the New York
18 State Penal Law says, attempted falsification of busi-
19 ness records.

20 MR. REID: Yes.

21 THE COURT: What is the exhibit number?

22 MR. LEVITES: Sixth-six.

23 (In open court.)

24 (Government's Exhibit 66 received in
25 evidence.)

xxx

1 bsklr

2 (Government's Exhibit 66 read to the jury.)

3 MR. LEVITES: It is stipulated between
4 defense counsel and myself that this has reference to
5 the Manufacturers Hanover loan -- Manufacturers
6 Hanover Trust Trust loan application about which you
7 already heard testimony about from Mr. Genatiempo: is
8 that correct, counsel?

9 MR. REID: Yes, it is.

10 THE COURT: You rest?

11 MR. LEVITES: Yes.

12 THE COURT: All right, ladies and gentle-
13 men, both sides have rested now and the next stage of
14 the trial are the summation of the lawyers and then my
15 charge.

16 However, there are a couple of administra-
17 tive matters that I have to review with the lawyers before
18 we reach that point so I am going to take a short recess
19 now and you are excused for a few minutes until I take
20 care of that.

21 (Jury excused.)

22 THE COURT: Gentlemen, with regard to
23 summations, how long does the Government want on sum-
24 mation?

25 MR. LEVITES: At the outside forty minutes,

Excerpts from Court's Charge to the Jury

Appendix Pages A-68 to A-71

(Transcript Pages 513 to 516)

1 bsklm

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2 she did receive mail addressed to Chester H. Jasper at
3 her place in Philadelphia.

4 The third element is the question of
5 defendant's knowledge and intention. Did he intend here
6 to obtain credit by means of false and fraudulent pretenses?
7 Was he acting wilfully, knowingly and unlawfully here?
8 Did he have the criminal intent?

9 How do you determine that? Well, of course,
10 ladies and gentlemen, an act is done knowingly and
11 wilfully if it is done voluntarily and purposely. And
12 with respect to these false statements, you may find
13 the defendant was acting knowingly and wilfully if you find
14 that the statements were false and the defendant knew
15 they were false, and acted with deliberate disregard as to
16 whether the statements were true or false -- in other words,
17 closed his eyes to the truth, unless, of course, you find
18 that the defendant at the time believed the statements were
19 true.

20 An act is done wilfully and knowingly and
21 unlawfully if it is done with an evil motive or purpose,
22 such as violating the statutes, trying to obtain money
23 by false pretenses and using the mails for that
24 purpose. But an act is not done wilfully, knowingly
25

bsklm

514

or unlawfully if it is done by mistake, by carelessness or by other innocent reason.

Obviously it is impossible to look into Mr. Vasper's mind to see what knowledge he had and what his intentions were on these occasions, but these are matters which you, the jury, can determine from a careful consideration of the facts and circumstances brought out during the trial.

The knowledge and intent, the wilfulness of the defendant, may only be put into contention with the circumstances surrounding his acts and the inferences which you the jury may find may reasonably be drawn therefrom.

You may ask yourselves whether you think these transactions were normal or abnormal, were they unusual or usual; whether you think the background of the defendant made it likely or unlikely that he fully understood what he was doing; whether you think the defendant has a motive; whether you think he had a financial interest in doing what he did.

These are the kinds of questions -- of course not the only ones -- that you should ask yourselves in order to determine knowledge and intent of the defendant.

bsklm

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1
2 Of course, I don't suggest any answers to
3 these questions. Of course they are not the only ques-
4 tions you might want to ask yourselves. After all, in
5 your own daily affairs you are continually called upon
6 to use your own common sense and experience to deter-
7 mine from the actions or statements of others, what their
8 real intentions are, and so do this with respect to
9 Mr. Yasper.

10 There was a lot of testimony during the
11 trial that didn't relate immediately to these credit
12 card applications, which are the subject of this trial.
13 You will recall there was testimony that other American
14 Express card applications were made by Mr. Yasper back
15 in 1970, '71 -- I think Mr. Morgan testified about these --
16 and these applications were received as Exhibits 26 to
17 31.

18 Then you remember the testimony of Mr.
19 Mione about the issuance of credit cards for the Diners
20 Club -- I think there were three Diners Club cards --
21 which were issued to Mr. Yasper. Again, I think that
22 was in 1970,

23 Then you remember the testimony of Mr.
24 Austin of the Chase Manhattan Bank regarding the Chase
25 Manhattan Bank Americard incident and then the testimony

1 bekim

2 of Mr. Carmine Conatiempo, do you remember him? Dinner-
3 time I said his name was, Dinnertime.

4 His testimony concerned the loan applica-
5 tion at Manufacturers Manover Trust Company back in
6 1974.

7 Then you recall that the Government intro-
8 duced as Exhibit 32 a record showing that the defendant
9 had pled guilty in this Court, I think it was back in
10 1974, in a somewhat similar scheme as charged here. I
11 think that involved American Express, but I'm not sure.

12 Then there was Exhibit 66, which was re-
13 ceived, indicating that the defendant has a prior con-
14 viction in the New York Court for the falsification
15 of business records.

16 Then Exhibit 3, which is the subject of
17 Count 4 which I dismissed, but that is another applica-
18 tion for a credit card.

19 Now, all of these matters may be considered
20 by you, not in determining the guilt or innocence of
21 the defendant on these charges, but may be considered ✓
22 by you when you consider his knowledge and intent in
23 making these applications which are the subject of this
24 trial.

25 In considering the evidence here, ladies

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U. S. ATTORNEY
SO. DIST. OF N. Y.

